IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 558 OF 1997

1. Shri P.D.Aher,
   Executive Engineer,
   P.W.Division,
   Trimbak Road, Nashik.

2. Shri S.R.Patil,
   Deputy Engineer,
   P.W.Division, Scarcity
   (PWD) Sub-Division,
   Niphad, Nashik. ... Petitioners.

V/s.

Shri Kedu Balu Pimpale
R/at Pimpale Ramache,
Taluka Niphad, Dist. Nashik. ... Respondents.

None for the petitioners.

None for the respondents.

CORAM: V.C.DAGA, J.

DATED: 22nd March 2006.

JUDGMENT :

. None for the petitioner. None for the respondent. Perused petition and annexures annexed thereto.

2. The learned A.G.P., during the course of hearing, appeared and sought leave to argue this matter. Since I had already commenced dictation of this judgment, I did not find it necessary to

hear him.

3. It may not be out of place to mention that in spite of repeated notices published in the cause lists and the practice note issued by the High Court, the petitioners did not care to file and/or circulate their written submissions. This lethargy on the part of the petitiones needs to be viewed seriously.

4. As a matter of fact, in view of non-compliance of the directions issued by this Court, the petition is liable to be dismissed. However, dismissal of the petition in default will not serve the ends of justice. I, therefore, went through the petition without there being any assistance from either of the parties and after having gone through the petition, I did not see any reason to interfere with the impugned order for reasons stated hereinafter.

5. The factual matrix reveals that the respondent- workman was working as "Mali Mazdoor" from 30th October, 1980 under the Executive Engineer, Public Works Department (PWD), Nasik. His place of work was at Murbad, a sub-division attached to petitioner No.1- the Executive Engineer (PWD).

6. The respondent- workman, in his complaint, being Complaint (ULP) No.251/1987; filed under Item No.1(a),(b),(d),(f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short), claimed to have worked for more than 240 days continuously ineach calender year. He, in his complaint, has contended that on 30th July, 1987 his services came to be retrenched by oral termination without any advance notice and/or without offering him retrenchment compensation in advance. According to him, his termination was in violation of the provisions of section 25F of the Industrial Disputes Act, 1947. That the petitioners (original respondents) had committed unfair labour practices under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short).

7. On being noticed, petitioners- employers appeared and filed their reply challenging the contentions raised by the complainant-workman (respondent herein). According to the petitioners- employers, the respondent- workman

did not work for more than 240 days continuously in any of the calender year. It was, thus, pleaded in the written statement that provisions of section 25F of the Industrial Disputes Act were not attracted.

8. The respondent- workman after obtaining leave from the Court filed affidavit of evidence in support of his case. The said affidavit came to be marked as Exh.270 in lieu of the oral evidence.

9. The workman has also placed on record all material facts by way of his affidavit of evidence. He has specifically stated on oath that he worked as Mali Mazdoor with effect from 30th October, 1980 for more than 240 days and, thereafter, on 30th July, 1987 his services came to be terminated without giving any prior notice or without offering him retrenchment compensation.

10. The workman has also stated in his affidavit that he did work for more than 240 days continuously in each calender year. He has also stated that neither any charge-sheet was given to

him nor any enquiry was held against him and that his services were illegally terminated by oral order issued by one Shri Thakre, Deputy Engineering of P.W.Division. That he was receiving Rs.19.05 per day as wages from the petitioners- employers. That his juniors were retained while terminating his service. The principle of last come first go was given go-bye. He has further stated on oath that though an interim relief was granted in his favour by the Labour Court vide order dated 1st September, 1987, but the said order was never complied with by the petitioners- employers and he was not paid a single pai.

11. The respondent- workman has also stated on oath that the petitioners- employers were also directed to produce certain documents, by the Labour Court vide its order 29th September, 1987. However, in spite of specific order of the Labour Court, the petitioners- employers did not care to produce any record, as such the workman prayed for drawing an adverse inference against the petitioners- employers.

12. In spite of grant of several opportunities, the complainant- workman was not cross-examined by the petitioners- employers. No documents which were in possession of the petitioners, were produced by them to show for how many days the complainant- workman worked.

13. After taking survey of the factual aspects of the matter; noticing absence of cross-examination; and refusal on the part of the petitioners to produce documents on record; that too; in spite of specific order, the Labour Court was pleased to hold that it was a fit case for drawing adverse inference against the petitioners. The Labour Court, relying upon various judgments of this Court and that of the Apex Court referred to in the impugned order; vide its order dated 20th December, 1995, was pleased to hold that by terminating services of the respondent- workman the petitioners- employers have engaged in unfair labour practices under Item No.1(b) and (f) of Schedule IV of the MRTU & PULP Act. The petitioners- employers were directed to reinstate the respondent- workman with continuity of service and full back wages from the date of his

termination i.e. 30th July, 1987 within one month from today.

14. Being aggrieved by the aforesaid order, petitioners- employers preferred Revision Application (ULP) No.53/1996 before the Industrial Court, Nasik. The said revision was heard by the learned Member of the Industrial Court, who was pleased to concur with the view taken by the Labour Court. The revision application came to be rejected at the stage of admission itself with direction to the petitioners- employers to comply with the order of the Labour Court with immediate effect.

15. Being aggrieved by the aforesaid order, petitioners have invoked writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

16. When the petition came up before this Court on 19th February, 1997, a statement was made by learned A.G.P., on instruction from Mr.S.R.Patil, Deputy Engineer (PWD), Nasik, that the petitioners shall pass appropriate order with

respect to reinstatement of the workman within one week from the date of the order i.e. 19th February, 1994. It appears from the order dated 26th February, 1997 that the order of reinstatement of the respondent- workman was issued and that the respondent has also joined on 21st February, 1997. In that view of the matter, restricted rule was issued and interim stay with respect to payment of back wages from the date of termination of the respondent- workman was granted.

17. In the aforesaid view of the matter, I do not see any reason to differ with the view taken by the Labour Court as well as that of the Industrial Court. In absence of any cross-examination of the workman in spite of several opportunities; and failure on the part of the petitioners- employers to produce relevant documents, in spite of specific order of the Court are sufficient to accept the contentions raised by the respondent/complainant- workman. The complainant has proved his case in accordance with law and no interference with the impugned order is call for. Since the respondent- workman has

already been reinstated pursuant to the order of this Court dated 19th February, 1997, the petitioners are directed to pay full back wages to the respondent- workman, payable to him pursuant to the impugned order of the Labour Court dated 20th December, 1995, within six weeks from today, failing which, amount of back wages shall carry further interest at the rate of 10% per annum from 1st May, 2006 till payment in full and final.

18. In the result, petition is dismissed. Rule is discharged. However, petitioners shall pay costs quantified in the sum of Rs.2,500/-.

(V.C.DAGA, J.)